DOCUMENT RESUME

ED 222 983 EA 015 134

AUTHOR Neal, Richard G.
TITLE Retrieval Bargaining: A Guide for Public Sector Labor Negotiations.
REPORT NO ISBN-0-9605018-2-7
PUB DATE 81
NOTE 38p.
AVAILABLE FROM Publications, Richard Neal Associates, Box 23, Manassas, VA 22110 ($10.00).
PUB TYPE Guides - Non-Classroom Use (055) -- Viewpoints (120)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Administrative Principles; Administrator Guides; Change Strategies; *Collective Bargaining; Contracts; Contract Salaries; Employer Employee Relationship; Fringe Benefits; *Government Employees; *Labor Relations; Public Administration; *Retrenchment
IDENTIFIERS *Cutback Management; *Retrieval Bargaining

ABSTRACT

Retrieval bargaining is the process of removing, through collective bargaining, benefits won by employees in previous negotiations. This document treats the retrieval bargaining process, explaining first the factors that could make such cutback management techniques necessary in the public sector, including federal funding reductions, inflationary pressures, and declines in client populations. Potential obstacles to retrieval bargaining, notes the author, include union resistance, civil service job security provisions, government regulations, public opinion, and public employee unions' concepts of productivity. Counseling against cutting employee salaries except as a last resort, the author suggests several areas for cutting costs and proposes a procedure for handling retrenchment in a hypothetical case. Finally, the author recommends tactics that public sector employers can use when conducting retrieval bargaining. Among these tactics are publicizing the financial position of the agency, ensuring the support of members of the agency's governing body, reviewing the current contract, modifying compensable benefit provisions, increasing employee workloads, cutting salaries, and providing cost-free benefits. (PGD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED222983

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Richard G. Neal

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

RETRIEVAL BARGAINING

A GUIDE FOR PUBLIC SECTOR LABOR NEGOTIATIONS

KA U15 153

BY
RICHARD G. NEAL

ISBN: 9605018-2-7

Copyright 1981 by Richard Neal Associates. All rights reserved. No part of this work may be reproduced in any form without permission of the author. Library of Congress Catalogue 81-90749, ISBN: 960501 8-2-7

COMMENTARY

Richard G. Neal is one of the most experienced negotiators in the public sector. I have had the pleasure and privilege of working with him over the past 16 years. During that time, not only has he negotiated very successfully in a variety of settings in several states, but he has served as editor of distinguished periodicals in the field of negotiations, has written or been the co-author of a number of books in the field, has been a featured lecturer in more than 100 seminars, and is the star performer in two widely used films, Dynamics of Negotiations and Solving Impasses.

The negotiations strategies set forth in this book are a distillation of the personal experiences and successes Mr. Neal has enjoyed. I commend them to you as pearls beyond price. Treasure them and use them well.

Eric Rhodes, Ed.D.
National Labor Rela ions Consultant

ABOUT THE AUTHOR

Richard G. Neal is a specialist in government personnel administration and public sector labor relations. During the past 15 years, Mr. Neal has lectured to thousands of management personnel throughout the United States and Canada. He is the author of several books on various aspects of collective bargaining in the public sector, as well as author of numerous articles in professional journals. He has represented both management and labor, which has given him unusual insight into labor relations. Mr. Neal is also editor of a number of journals in the area of public sector labor relations.

TABLE OF CONTENTS

THE BACKGROUND 1

REASONS FOR RETRIEVALS 4

OBSTACLES TO CUTBACKS 6

WHERE TO CUT 9

HOW TO RETRIEVE 15

SUMMARY 31

THE BACKGROUND

During the post-World War II period, until around the beginning of the mid-1970s, American citizens generally experienced an expanding and profitable economy. Some of the profits from this expanding private sector economy were used to support the expansion of the public sector.

Collective bargaining was introduced into the federal service by President Kennedy under his Executive Order 10988, while various states began to adopt state collective bargaining laws during the mid-1960s. During the first decade of collective bargaining, from about 1968 to 1978, the process spread rapidly to most of the states. During that period, most agreements were settled on the basis of the employer being able to give more to employees with each new contract.

Beginning during the mid-1970s, however, signs of serious economic problems began to emerge, and by the dawn of the ninth decade of the twentieth century, the nation awoke to find itself in the midst of economic stagnation. The productivity of the nation had ceased in its increase, and Americans for the first

time in a half century faced the prospect of a declining standard of living and a declining leadership in the world of nations.

How did this sad state of affairs come to be? The answer is far less complex than many politicians and academicians would lead us to believe. Simply stated, the reason for the decline of America is due to the fact that the productive energies of the nation were systematically transferred to unproductive endeavors through the power of the government to tax its citizens, to regulate the free enterprise system, and to debase the monetary system.

As a result of the irresponsible exercise of these powers, millions of well-intentioned and hard-working citizens, including public employees, found their earnings being eroded by their own government.

As a consequence of government policy, which at times seems to punish productivity and reward unproductivity, both the private and public sector were in serious trouble by the beginning of the 1980s. No longer could the free enterprise system carry the burden of government folly. No longer could the prosperity generated in the private sector support a

bloated public sector; for without private prosperity there can be no public prosperity. Therefore, after over almost a decade of routinely getting more at the bargaining table, the time came when public employees faced the real possibility of having to accept less.

This is where "retrieval bargaining" comes in. Sometimes referred to as "roll-back bargaining," "retrogressive bargaining," "take-back bargaining," or "give-back bargaining;" all are titles for removing, through negotiations, benefits previously won through negotiations.

REASONS FOR RETRIEVALS

There are several reasons why retrieval bargaining might be necessary:

1. Cut-backs in federal aid may necessitate that cost-cutting be applied to either programs or employee benefits. The removal of federal funds means that either the agency budget must be cut or that alternative sources of revenue must be found.

2. The increase in the Consumer Price Index is a measure of how rapidly the dollar is being debased and, accordingly, to what extent the purchasing power of the dollar is being reduced. As the power of the dollar declines, government agencies are less able to underwrite their programs without an increase in the amount of dollars required. For example, a school district with a fixed revenue of $10,000,000 and a CPI increase of 10% would need to reduce its costs by approximately 10%, or $1,000,000 in order to balance its budget. Such a drastic erosion of purchasing power is bound to affect the operation of the agency.

3. Declining city populations and declining school enrollments often necessitate a corresponding reduction in programs and personnel.

4. Shifts in the political orientation of governing bodies from "liberal" to "conservative" may generate economy drives which result in cutbacks in agency programs.

5. Retaliation against the union and its members may in a few instances be the cause for cutbacks in employee benefits.

OBSTACLES TO CUTBACKS

Whatever the reason for cutbacks in government expenditures, if such cutbacks require removing negotiated benefits from the labor contract, there are a number of obstacles which must be faced, among which are the following:

1. The union will resist all attempts to remove benefits previously negotiated. This resistance is understandable, since a union survives on the belief of employees that the union is responsible for delivering "more" each year to the employees. Later on we will discuss how to overcome this obstacle.

2. Civil service regulations which provide job security for public employees can inhibit the removal of certain provisions in the labor contract. For example, teachers' jobs are protected by state tenure laws, and many state civil service regulations provide similar protection to other state employees. The same is true at the federal level. As a result, cost-cutting through removal of surplus

employees may be hampered by such protections.

3. Many government regulations prohibit reasonable cost-cutting methods. For example, some cities have ordinances requiring a specified number of policemen. Many states have state regulations limiting the maximum number of students which may be assigned to teachers. And, many federal laws, such as the one which requires that buildings be accessible to the handicapped, similarly prohibit cost-cutting in certain areas.

4. Some public employees have a grass roots constituency. For example, any serious move by a local school board to take action strongly opposed by teachers faces the risk that tax-paying parents will confront the school board at its next meeting.

5. Attitudes toward productivity seem to be different among public employees than among private sector employees. Whereas unions in the private sector are familiar with layoffs as a function of the market and of productivity,

public employees have seldom faced layoffs and seem not to recognize the relationship between productivity and their own jobs.

As a result of these and other obstacles the likelihood of convincing public sector unions that they should accept reductions in benefits may entail some very special problems.

WHERE TO CUT

The possibility of succeeding at retrieval bargaining is improved if cutbacks take place on anything but employee salaries and compensable benefits. If the employees are convinced that cuts are inevitable, they will tolerate roll-backs in the labor contract if the basic benefit package is not reduced. Therefore, the first rule in retrieval bargaining is to use employee salaries as the last source of roll-backs. Some readers may find this advice difficult to accept, but it is born of the belief that if an employer shows good effort in trying to take care of the employees, that employer will be rewarded with loyal service from the employees.

Before the basic employee benefit package is reduced, other aspects of the agency budget should be reviewed for possible cuts.[1] Listed below are several

[1] See the excellent book, 41 Ways to Cut Costs In School Budgets, by Eric F. Rhodes, 1981, 129 pps., EFR Corp., 120 S. Court Street, Orlando, Florida 32802.

examples of where cost-cutting could likely take place:

1. Practically all government operations can find ways to save some energy consumption without harming the main mission of the agency. Heating and air-conditioning can be made more efficient and lighting expenses can be reduced. There are many expert consultants in the field of energy conservation and many new technological advances have taken place. Furthermore, there is a plethora of literature available on the many ways to save energy costs.

2. Capital outlay expenses can often be deleted or postponed. Where capital outlay is designed for added agency space, existing space often can be found or modified to avoid expensive new construction. Or, in some cases portable space can be less expensive and more useful than permanent new space construction.

3. Some agencies have surplus capital goods, equipment, and facilities. Hundreds of empty and unused school buildings exist throughout

the nation, many of which could be sold or rented. The author once served as the chief negotiator in selling several school buildings valued at several million dollars. The sale provided to be a needed windfall for that community.

4. In the area of building maintenance there are many ways to cut costs, from contracting out to deletion or postponement of low priority jobs.

5. In the area of purchasing there are many techniques to save money through bulk-buying, consortium-buying, off-season buying, etc.

6. As far as agency programs are concerned, every government agency has programs which, under budget limitations, can be scaled down or eliminated, particularly if the cost/benefit ratio of such programs is poor. Through careful selection of such programs and sensitive personnel management, these programs can be reduced or eliminated without any existing employees having to be dismissed.

Under normal circumstances there are certain successful procedures and tactics which can be used when the rollback of a labor contracty becomes necessary. For purposes of discussion here, we will establish a hypothetical situation, in this case a school district where there is a legitimate shortfall between the normal expenditures of the school district and the anticipated revenue for the school district.

Faced with such a problem here is the procedure that should be followed:

1. Prior to the beginning of bargaining, the superintendent should prepare a draft of the budget for the ensuing school year. This draft budget should be initially based on the legitimate need of the school district, as recommended by the staff. It should include an appropriate inflation factor, a cost-of-living adjustment (COLA) equal to the estimated Consumer Price Index, plus any personnel salary increment. The fact that these amounts are under consideration should be kept confidential, since such matters are subjects that must be dealt with at the bargaining table.

2. After the tentative budget has been prepared, the anticipated revenue for the ensuing school year should be calculated. The extent that the anticipated revenue is short of expenditures is the amount of money that needs to be cut from the budget. Where this money comes from is a matter of priorities. Naturally, expenditures required by law or regulation must be made. For example the requirements of Federal Law P. L. 94-142 (Special Education for the Handicapped) must be met irrespective of budget shortfalls.

   Expenditures not required by law should be examined for possible reduction, except for the salaries and compensable benefits of employees who will be with the school system the following year. The book, 41 Ways To Cut Costs In School Budgets,[2] provides some excellent guidelines on how to do this. When such potential cuts have been identified, their total cost should be tallied; and if the amount equals or exceeds the shortfall, the problem has been solved. This means that the budget is balanced, even with a COLA for all employees.

---

[2] Ibid.

3. If such reductions are less than the anticipated shortfall, then more, even deeper, cuts may be needed in order to avoid cutting back on the COLA and general employee compensable benefit package. However, should cuts in either personnel or employee benefits be necessary, they should be cuts which do not require bargaining with the union, to the extent possible. For example, most school boards would not be required to bargain with the union prior to deciding that certain vacancies will not be filled. On the other hand, if needed financial reductions can be found only in the labor contract, then retrieval bargaining will be required.

HOW TO RETRIEVE

As stated previously, retrieval bargaining is difficult under the best conditions. Should, however, an employer be faced with the necessity of reducing benefits in a labor contract, the following are some suggestions which have proved successful:

1. Information that a budget problem may exist for the ensuing budget year should be released. The purpose of this tactic is to begin the process of persuading the union that a legitimate and unavoidable budget shortfall exists. Chances are that this will be known anyway, because most serious budget shortfalls have a history and do not develop overnight. Additionally, the local press usually covers such matters quite well. So in most cases, the employees and their union will be aware of a pending budget problem long before negotiations begin.

   It is imperative that the employees be aware of an anticipated deficit. It is even more imperative that the employees <u>believe</u> that

such a problem exists. There can be no successful retrieval bargaining unless the employees are convinced there is a serious budget problem that cannot be resolved without sacrifices from the employees. If the employees don't believe that a serious deficit exists for the next year, peaceful retrieval bargaining will not take place, and the governing body will be compelled to force through needed cuts. Most likely such an action will result in a strike and prolonged labor strife. Therefore, successful retrieval bargaining is based on the ability of management to convince the employees that a serious problem exists, the solution to which depends upon sacrifices by the employees.

2. Early in the strategy of retrieval bargaining, the governing body should understand and accept that some financial roll-backs in the labor contract will be necessary. Furthermore, the governing body should also clearly understand that the process of retrieval bargaining will be difficult and may encounter pressures not previously experienced in the bargaining process. The governing body should

anticipate that the employees might undertake certain acts of militancy in order to convince the governing body to change its position. In such an event, the governing body should agree that such acts by employees and their union will not deter the employer from its mission. The absence of unity among the members of the governing body provides an invitation for the union to divide the board, and thus weaken its will to persist in its strategy.

The actual contract items which are potential deletions or reductions should be identified initially by the chief executive and then discussed with the governing body. Although the governing body may express its views on priorities, it should leave its negotiator with all reasonable flexibility so that negotiations can be successfully carried out. If the governing body were to specify exactly what should be done on each item, leaving no discretion to its negotiator, the union would likely consider this an act of bad faith, if not an unfair labor practice.

The next step in retrieval bargaining is to evaluate the current contract, along with the new negotiations

proposal of the union. This is necessary to identify items to be deleted or reduced, and to plan the overall strategy for retrieval bargaining.

Regardless of what individual contract provisions are selected for retrieval, the management negotiator should convey at the first meeting the absolute necessity of cutting back on costs which arise from the labor contract. This suggestion should not be interpreted to mean that the initial statement of management should be presented in a threatening or hostile manner. To the contrary, management should convey a sincere concern for the sacrifices that the union and the employees will be required to make.

The sincerity of management can be demonstrated by indicating to the union what actions are being taken by the governing body and its staff to avoid more serious cuts in the labor contract. In explaining its actions, however, the chief negotiator should make it clear that no negotiations will take place on these unilateral actions of the employer. The explanation is provided solely to convince the employees that sacrifices will be made in agency operations generally, and not just by the employees.

As stated previously, the actual items to be modified in the labor contract should be tentatively identified prior to the opening of negotiations. When the new negotiations proposals are received, they should be evaluated in conjunction with the present contract, and the contract provisions which need to be deleted or reduced should be identified.

In analyzing the labor contract to identify those provisions which cost money, there are only three major categories where financial savings can be made. Those three areas are: compensable benefits, wages, and employee workloads. As stated previously, every effort should be made to avoid cutting wages and benefits by reducing expenditures where bargaining is not a prerequisite. Even when reductions are necessary in the labor contract, cost areas other than salaries and benefits should be considered first.

If cuts in compensable benefits are necessary, however, there are a number of benefits which can be considered, among which are:

1. Sabbatical leaves

2. Health insurance premiums

3. Retirement contributions

4. Sick leave

5. Pay for accumulated sick leave

6. Severance pay

7. Pay for extra duties

8. In-service

9. Disability income insurance premiums

10. Accident insurance premiums

11. Group life insurance premiums

12. Tuition reimbursements

13. Uniform allowances

14. Workmens compensation

15. Mileage reimbursements

16. Union leaves

The above list is not meant to be complete. Nor is the list intended to suggest that any or all of those compensable benefits should be cut. The list is presented only to indicate where to look for possible cuts, should cuts in benefits be required as a last resort. Also, there is normally no reason for an entire benefit to be cut.

For example, here are some ways to modify some compensable benefits without deleting the entire benefit:

1. There are a number of ways that sabbatical leave can be limited. The number of employees approved for leave can be reduced, or the amount of salary paid to employees on leave can be lessened. Or, the length of the leave could be shortened to six months, or even less.

2. Health care insurance payments could be changed from a percentage payment to a flat dollar payment, which should result in both short- and long-range savings.

3. Some retirement plans can be arranged to permit early retirement at a savings to the

employer and to the satisfaction of the employee.

4. Pay for accumulated sick leave could be held constant or a maximum placed on accumulation, or the pay could be reserved only for those who retire under the applicable retirement system.

5. Severance pay can also be held constant or reduced.

6. Leave for in-service activities could be reduced, which would also be accompanied by a reduction in the cost of the activity itself.

7. Group life insurance premiums can be reduced, in many instances, through aggressive competitive bidding.

8. Tuition reimbursements could be limited by paying only for courses directly related to the employee's job.

9. In some cases certain aspects of workmens' compensation has become a matter for nego-

tiations. In such a case, ways can be found to reduce the cost of the program through improved safety conditions at the work sites and by thorough investigation of claims.

These are just a few examples of where reductions can be made in employee compensable benefits. Each government agency should be able to identify additional areas for possible consideration.

One way to make such cuts in benefits more palatable is to make the cuts apply only to new employees or to begin to apply the cuts at some future date. Although such an approach does not result in sizeable and immediate savings, they do eventually add up. The gradual application of such cuts also allows time for the employees to make adjustments to the modified benefits.

Workloads can be increased

As stated before, other ways to save funds is to increase workloads so that additional employees need not be hired, avoid the filling of vacancies, and/or allow the laying-off of other employees. When

employees are convinced that cuts must take place in the agency and in the labor contract, they will usually cooperate with management in order to avoid cuts in their salaries.

The number of potential ways that the productivity of the work force can be increased in order to reduce expenditures in other areas is limitless. It would be impossible to begin to compile a complete list. Each school district and each municipal and county jurisdiction should make its own list. Just to get such a list started, though, here are a few examples:

1. Teachers can accept larger classes so that positions which become vacant can be eliminated, resulting in considerable savings. Large classes can also eliminate the need for some teacher aides, which also results in a considerable savings.

2. Custodians can be assigned more space to clean.

3. In all government agencies there are some high-paid experts performing tasks which could be performed by a secretary, clerk, or tech-

nician. Through good management, these jobs can be transferred to lower-paid positions as the higher-paid experts retire, resign, or are transferred.

4. Where possible, automation and technology should replace humans in the workplace where the cost/benefit ratio warrants such action. For example, computers can in many instances perform tasks which otherwise would need to be performed by humans.

5. Better use of tools and machinery can make human effort more productive. For example, the use of a "mother loader" with a trash truck cna increase the amount of trash collected by each trash collector.

6. In some cases, as certain positions become vacant, they can be filled by part-time employees, per diem employees, or consultant services at a lower cost than the original employee.

Using the above list as a guide, each government agency anticipating reductions in the labor contract

should examine its own operations and compile its own list. One way to get viable ideas is to involve the union. Given an opportunity to participate in the solution of problems, employees are an excellent source of ideas for getting more work done with less effort. It is not uncommon for employees to see inefficiencies of which management is unaware.

As a matter of fact, once the union begins to suggest ways to improve efficiency, that's a certain sign that the union recognizes the problem and is willing to assist in seeking a solution.

Salaries may need to be considered as a last resort

As stated earlier, retrieval bargaining involves examining compensable benefits, workloads, and wages for possible areas of savings. Should salaries become an unavoidable target of modification, there are a number of approaches which can be used:

1. All future employees can be employed at a salary lower than the normal salary scale would call for. This approach gives some protection to veteran employees and allows new employees to accept less voluntarily.

2. The basic salary scale can be cut. This approach, although the first option usually thought of, it is the last option that should be used. Although there have been a few cases in private industry where employees have accepted salary reductions, it is as yet unheard of in the public sector, and should be used only when all other alternatives have been exhausted.

3. Only the step increase (annual increment) can be allowed. This option, too, is extreme, especially in times of inflation, since such action really means that the employees must take a salary cut. But such an approach does keep the basic scale intact. In actuality, however, the employees will view this solution as a salary "freeze" and be very displeased with it.

4. Change from a percentage salary increase to a flat dollar increase. A flat dollar increase will not only be cheaper than a percentage increase, but it gives everybody a salary increase and treats everyone with equal harshness and, when employees are suffering,

there is a certain comfort in at least begin treated equitably.

5. The salary increase can be delayed for a month or more. Such a delay results in an immediate savings and keeps the salary scale intact for the future.

6. An entire new salary scale can be negotiated. Naturally, the new scale would cost less to implement than the old scale, but it still should provide a salary increase for all employees; and such an increase would be less than that provided under the previous scale.

Non-cost union proposals may become valuable

When the union realizes and accepts the fact that reductions in compensable benefits and wages are inevitable, there is a likelihood that they will expect generous concessions in the area of noncost benefits and noncost working conditions. Examples of some noncost benefits are:

1. Parking spaces for employees

2. Subsidized meals

3. Use of agency facilities, such as gymnasium, shop equipment, etc.

4. Employee lounge

The term "noncost" benefit really means that there is no immediate direct cost item in the agency budget. Obviously, however, all benefits have some cost associated with them.

Faced with threats to their compensable benefits and wages, the employees may also expect improvements in their working conditions, which the union may view as not being costassociated. Examples of such "non-cost" working conditions are:

1. Automatic payroll deductions for insurance premiums, payroll savings, etc.

2. Posting of all promotional positions

3. Recording leave balances on check stubs

4. Various privileges based upon seniority

5. Binding arbitration of grievances

6. Negotiations on agency time.

The purpose of the above list is to indicate that unions present proposals to improve working conditions that have no direct impact on the agency budget. Each school board and each municipal council can analyze the union's proposals for such items and use them as trade-offs at the bargaining table to obtain a settlement on a difficult salary issue. True, the packaging of noncost working conditions wtih salaries is unorthodox, but in difficult negotiating circumstances, unorthodox tactics are called for. The use of this tactic has an additional advantage in that the union has some extra "wins" it can report to the members at ratification. Without such "wins" the employees might reject the proposed contract, which would likely set into motion a serious labor problem.

SUMMARY

Retrieval bargaining is never easy. Should your agency see the possibility of a budget shortfall, here is a brief recapitulation of what should be done:

1. Determine the extent of the shortfall with no diminution in employee salaries or benefits, but with a COLA.

2. Try to absorb the anticipated deficit in areas other than costs in the labor contract.

3. If reductions in the labor contract are necessary, consider the three areas of compensable benefits, wages, and employee workloads. Get the union to help solve the problem. Try to protect the basic salary scale.

4. Use noncost union proposals on working conditions as trade-offs in order to get the union to accept a salary less than would otherwise be acceptable.

The 1980s will bring difficult times for government employees, and collective bargaining will not avoid such difficult times. When it becomes necessary to cut back on benefits and wages, it is hoped that the suggestion offered here will help you succeed at retrieval bargaining.